

REMARKS

An interview took place on October 28, 2009, concerning the above-referenced patent application between the undersigned, and Examiner Amelunxen and Examiner Felten. Also present at the interview was Charles R. Macedo of the Amster firm acting in a supervisory capacity as in-house counsel for the assignee. The claims of the present application were discussed, and the 1997 Advertisement, the Hagan Patent, the 1983 and 1988 Federal Reserve letters, the Merrill Lynch Savings Account Fact Sheet and the Oncken patent were distinguished. Agreement was reached that Allowances would be issued for the present case, and also Divisional 11/149,278 and Continuation 11/932,762.

In the claims, the language “each of more than six (6) withdrawals and/or transfers by check and/or debit card and/or ACH debit within a month” or similar language is intended to be interpreted as more than 6 withdrawals for payments to third parties, where at least more than 6 withdrawals are made by one or more selected from the group of checks, debit card, and ACH.

SECTION 103 REJECTION: The claims were rejected under 35 USC 103 as obvious over Merrill Lynch, CMA Insured **Savings Account** Fact Sheet, in view of the 1983 Zaitzeff letter, and further in view of the 1988 Schwartz letter. This rejection was successfully traversed during the interview, and reconsideration and withdrawal of the rejection is respectfully solicited.

The present claimed invention is directed to **a volume checking/debiting operation that processes funds resulting from large numbers of checking, debiting and other withdrawal transactions from a single client in a month, but processes by using a netting of withdrawals and deposits for many clients, and using those netting results to make transfers of aggregated amounts from and to a plurality of large aggregated accounts to not only facilitate those large numbers of individual checking/debiting withdrawals in a month, but also to accrue and pay interest at the same time on the funds of the individual clients, despite the checking/debiting processing.**

WHAT IS MISSING FROM THIS REFERENCE COMBINATION IS AT LEAST THE FOLLOWING, TAKING CLAIM 51 AS A REPRESENTATIVE EXAMPLE:

51. (Previously presented) A method for managing a plurality of client demand accounts for one or more clients, wherein the client demand account funds are held in one or more FDIC-insured and interest-bearing aggregated deposit accounts, which are not NOW accounts, at one or more banking institutions, said method comprising:

administering clients' deposits and/or transfers to and withdrawals and/or transfers from each of said client demand accounts, **said administering step comprising processing, by one or more computers, transaction data comprising data for each of more than six (6) withdrawals and/or transfers by check and/or debit card and/or ACH debit within a month from each of a plurality of said client demand accounts,** with the transaction data comprising a respective amount for each respective withdrawal and/or transfer;

[MISSING FROM THE REFERENCE COMBINATION]

determining, by one or more computers, on a regular basis one or more net transactions, with each net transaction comprising a sum of a plurality of clients' deposits and/or transfers to and/or withdrawals and/or transfers from a plurality of said respective client demand accounts of a plurality of the clients;

[MISSING FROM THE REFERENCE COMBINATION]

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MERRILL LYNCH SAVINGS ACCOUNT FACT SHEET: The Examiner acknowledges that the Merrill Lynch CMA **Savings Account** Fact Sheet does **NOT** disclose more than 6 checking or debiting withdrawals in a month from the CMA account. See page 4 of the Office Action. In fact, the Merrill Lynch CMA **Savings Account** Fact Sheet directly teaches away from this processing. See the Fact Sheet statement at cited page 53 that it is not a checking account.

“The CMA account is not a bank account or intended as a substitute for checking or similar types of accounts.”

[Emphasis added.]

REGARDING VOLUME CHECKING/DEBITING PROCESSING IN THE CONTEXT OF LARGE AGGREGATED ACCOUNTS

The Merrill Lynch CMA **Savings Account** Fact Sheet does **NOT** disclose “**processing, by one or more computers, transaction data comprising data for each of more than six (6) withdrawals and/or transfers by check and/or debit card and/or ACH debit within a month from each of a plurality of said client demand accounts.**”

The Merrill Lynch CMA **Savings Account** Fact Sheet does **NOT** disclose “**aggregated accounts.**” It teaches away from them.

The Merrill Lynch CMA **Savings Account** Fact Sheet does **NOT** disclose netting transactions from many different client demand accounts to obtain a “**net transaction.**”

The Examiner cites page 50 of the Merrill Lynch CMA **Savings Account** Fact Sheet as disclosing large “**aggregated accounts,**” in the context of client checking and debiting accounts. Applicants respectfully disagree. This reference indicates the **opposite**.

Note at the outset, that under FDIC rules, the balances in all of the different accounts actually holding funds (savings accounts, CD’s, checking accounts, etc.) of a single customer in a single bank are aggregated for purposes of determining whether the customer has exceeded the FDIC insurance limit (\$100,000 at that time). Note that this does **not** mean that there is a single account **holding all of the funds** of these different customer accounts. No such single account **holding** funds exists in this context for the customer. Rather, the calculation is simply performed to determine if the FDIC insurance limit has been exceeded in the bank for this customer.

On page 50 of the Merrill Lynch CMA **Savings Account** Fact Sheet, the word “**aggregated**” is used twice in the top paragraph, and the word “aggregate” is used in the last paragraph of page 50. In each case, the word “aggregated” as used, is referring, as noted above, to aggregating balances **held** in different accounts of the same account holder for purposes of determining the FDIC insurance coverage available, **Not** aggregating funds of different account holders to be held in the same account. The top paragraph of page 50 is referring to the situation where two of the banks holding a client’s funds have **merged**, and applying the FDIC rule of adding up balances of funds of a single client held in multiple other accounts in the same bank (i.e., there is no aggregated account here holding funds of

multiple clients) to determine whether the sum of the funds held in these separate accounts exceed the \$100,000 (at that time) FDIC insurance limit for a **single account holder**. The section “How the ISA Account Works,” referenced by the Examiner, is again referring to the \$100,000 FDIC insurance limit for a given **single client account holder** in a bank, and setting a ceiling of \$98,500 for the single client account. This section states that if the ceiling of \$98,500 is reached, then funds over this ceiling are transferred to the next bank in a given priority sequence of banks. The exception to following this priority sequence for the individual client is that if the total of deposits from Merrill Lynch customers at that next bank in the priority sequence has already reached a maximum total limit set by that depository institution, then the next bank in the priority sequence will be selected for that individual client account (see the last paragraph on page 50). Thus, this section was directed at FDIC insurance for a single client account, and says nothing about large aggregated deposit accounts holding the funds of many different clients aggregated in the respective large aggregated account, much less using such an aggregated account in the back-end computer processing for checking and debit accounts where more than 6 withdrawals are made by one or more of checks, or debit card, or ACH withdrawals in a month for each of a plurality of clients. The Merrill Lynch **Savings Account** Fact Sheet explicitly teaches away from this claimed configuration.

The overall Merrill Lynch CMA **Savings Account** Fact Sheet further supports that there is no teaching of a programmed system disclosed therein that uses multiple aggregated accounts and which operates as a back-end for processing funds resulting from a large plurality of checking/debit transactions comprising payments made to third parties. Rather, it supports that individual accounts are opened. See page 47:

“The Insured Savings Account (ISA account) is a feature of the Cash Management Account financial service making available to you **one or more money market deposit accounts each** (“an account”) **opened on your behalf** by Merrill Lynch at one or more banks or savings associations.”

“Deposits in the ISA account are protected by federal deposit insurance at each bank or savings association **at which you may establish an account . . .**”

“Since there is more than one depository institution at **which you may establish an account . . .**”

[**Emphasis added.**]

To buttress this point further, see page 53, under the heading “RELATIONSHIP WITH MERRILL LYNCH,” which one of ordinary skill in the art would understand to mean that separate accounts for the client at the depository institutions can be severed and placed in the name of the respective client.

“Merrill Lynch is acting as agent and messenger for its CMA financial service customers who establish an ISA account. **The separate accounts established** at Merrill Lynch on behalf of its CMA financial services customers **will be evidenced by a book entry on the account records of the depository institutions.**”

“If Merrill Lynch does not wish to continue to act as your agent with respect to your account, **you may deal directly with the depository institution**, subject to its rule with respect to maintaining such an account.”

“Similarly, if you decide that you no longer wish to have Merrill Lynch act as your agent and messenger **with respect to the account established for you at a depository institution**, you may establish a direct relationship with the depository institution, subject to its rule with respect to maintaining such an account, by requesting to have the account issued in your name. This will result in a severing of such account from the CMA financial service.”

[**Emphasis added.**]

One of ordinary skill in the art reading this, would understand this to suggest that there would be a separate account to sever, in order for the above to happen. Thus, this is yet further evidence that a programmed system is not disclosed that uses multiple aggregated accounts and which operates as a back-end for processing funds resulting from a large plurality of checking/debit transactions comprising payments made to third parties for a large multiple of individual client checking and debiting accounts.

Regarding determining a “**net transaction**,” the Examiner cites page 49 under the heading “Aggregation of Retirement Plan Interests and Account Deposits.” However, this

section is referring to the retirement plans and IRA's of an individual. See the first two paragraphs in that section: "**You** may have interests in various retirement plans . . ." and "Under FDIC regulations, an **individual's** interests in employee benefit plans . . ."

There is nothing in this section about determining a net transaction, i.e., "**with each net transaction comprising a sum of a plurality of clients' deposits and/or transfers to and/or withdrawals and/or transfers from a plurality of said respective client demand accounts of a plurality of the clients,**" where over the course of the month, processing takes place for "**more than six (6) withdrawals and/or transfers by check and/or debit card and/or ACH debit within a month from each of a plurality of said client demand accounts.**" Retirement Plans and Certificates of Deposit for the CMA Savings Account Fact Sheet **are not intended to process for a single client "more than six (6) withdrawals and/or transfers by check and/or debit card and/or ACH debit within a month" for payments to third parties.** This is another teach-away from the claimed invention.

Regarding the "**more than six (6)**" checks or debit card transactions from a given client processed in a month limitation, the Examiner acknowledges, as noted above, that the Merrill Lynch CMA Savings Account Fact Sheet does **NOT** disclose the more than 6 withdrawals by one or more of checks, or debit card or ACH from an individual's CMA account in a month. See page 4 of the Office Action. Further to this point, the Merrill Lynch CMA Savings Account Fact Sheet actually states at page 53, as noted above, that it is not a checking account.

"The CMA account is **not a bank account or intended as a substitute for checking** or similar types of accounts."

[Emphasis added.]

To make up for the missing limitation of "**more than six (6) withdrawals and/or transfers by check and/or debit card and/or ACH debit within a month from each of a plurality of said client demand accounts**" that defines the back-end volume context of the present claims, the Examiner cites the 1983 Zaitzeff letter and the 1988 Schwartz letter from the Federal Reserve, both letters explicitly refusing to approve this computer processing operation. In particular, the examiner cites to the first sentence in paragraph 5 of the 1983 Zaitzeff Letter, and the idea in the 1988 Schwartz Denial Letter that Merrill Lynch was requesting that the withdrawal restriction for individuals be removed.

Regarding, the cited Paragraph 5 of the 1983 Zaitzeff Letter, it does **not** permit unlimited checking or debit withdrawals for making check or debit payments to 3rd parties. Rather, it simply requires a compliance with Regulation D.

The 1st sentence of cited paragraph 5 reads:

5. A CMA account customer will be permitted to make an unlimited number of withdrawals from the MMDA if the proceeds of such withdrawals are (a) **available directly to the customer from Merrill Lynch**, (b) used to pay for **securities transactions executed in the securities margin account** [of Merrill Lynch], or (c) used for purposes of **transferring a CMA customer's funds among accounts within Merrill Lynch.**"

[Emphasis added.]

This sentence of the Federal Reserve Letter simply says that withdrawals going to the customer directly, or to an internal Merrill Lynch account, are not restricted. It says nothing about checks, debit card withdrawals or ACH withdrawals for payments to third parties.

Regarding the 1988 Schwartz Letter, the last two sentences of the first paragraph cited by the examiner are as follows:

Now, in essence, Merrill Lynch is **proposing to operate the CMA Program** generally without the transfer and withdrawal restrictions that have been applied in the past and are normally used to define the MMDAs under the Board's Regulation D. **The restrictions under Regulation D**, 12 CFR Section 204.2(d) (2) (ii), **would continue to apply directly to MMDAs held through a CMA.**"

[Emphasis added.]

The Federal Reserve understood from the Merrill Lynch proposal, that what Merrill Lynch was requesting was that the CMA program, which actually comprised 3 separate accounts: a securities account (for the Merrill Lynch brokerage), a money account, and a Visa card - checking account, be operated without the restriction on withdrawals that had been applied in the past, but then stated, as reflected in the 2nd sentence above, that Merrill Lynch would continue to restrict transactions to third parties – the **opposite** of what applicants are claiming.

On this point, the Federal Reserve stated that Merrill Lynch is currently “responsible **for monitoring** CMA Program transfers and withdrawals to ensure that CMA transfers for each customer do not exceed the permissible number of transfers and withdrawals for MMDAs.” The Federal Reserve stated that they understood from the 1988 Schwartz letter that Merrill Lynch **was looking for relief from this monitoring obligation** based on an argument that most customers don’t go over this limit in a month.

“I understand that Merrill Lynch believes that experience with the CMA Program demonstrates that it is not being used as a device to evade the transfer limitations applicable to MMDAs, and therefore, **is seeking relief from the monitoring** requirements and the limitations on transfers to Bank One to cover checks to third parties (other than to Merrill Lynch) and to MLB&T to cover VISA transactions.” (Page 2, last paragraph of the 1988 Letter)

[Emphasis added.]

“The Seward & Kissell opinion attached to your letter states that CMA customer transactions of all kinds **average around five per month**, indicating that customers do not use their CMAs as transaction account substitutes.” (Page 4, top paragraph of the 1988 Letter)

[Emphasis added.]

Thus, this 1988 Merrill Lynch proposal is a teach away in at least three aspects. First, and most importantly, the Federal Reserve unequivocally rejected this proposal, and continued to reject it. Second, the proposal itself seems to argue that the relief from the monitoring requirement be granted because customers actually do not use the CMA account as a checking account because the average number of transactions of all kinds is around 5 per month. In other words, one of ordinary skill in the art would read this to mean that a CMA account is primarily for brokerage activities, and Merrill Lynch certainly does not intend to perform processing that **evades** the transfer limitations. Lastly, there is no reference to an actual aggregated account **holding funds** of multiple Merrill Lynch customers. Note that the language of the 1983 Federal Reserve letter indicates that an **individual account** for each CMA customer is established at the depository institution by Merrill Lynch:

“1. Each MMDA . . . will be held by natural persons.” “2. A CMA customer who elects to place funds in an MMDA would direct Merrill Lynch, as agent and custodian for the customer, to establish an MMDA at one of the participating depository institutions. However, for federal deposit insurance purposes, additional MMDAs would be established at other depository institutions for a particular CMA customer if his MMDA would otherwise exceed \$100,000 in principal and interest.”).

[Page 1 of the 1983 Letter.]

Note that establishing an individual MMDA for a natural person does not teach or suggest an account being held by Merrill Lynch on behalf of multiple different customers, i.e., an aggregated account. But there is language in the 1983 letter that the individual MMDAs in a depository institution are “consolidated:”

“Since the individual MMDAs at one depository institution are to be consolidated and under the control of Merrill Lynch, transactions by Merrill Lynch with the MMDA depository institution must be in person since otherwise Merrill Lynch would be subject to an overall limit of six preauthorized or automatic transfers (including telephone) per month at each institution.”

Footnote 3: “Although the MMDA at each depository institution is to be consolidated into one account for Merrill Lynch, depository institutions must adhere to any FDIC or FSLIC recordkeeping requirements for insurance purposes with regard to the underlying customer accounts.” See page 5 of the 1983 letter.)

[Page 5 of the 1983 Letter.]

But this reference is confusing and contradictory relative to other parts of the letter that refer to individual accounts at the depository institution, and does not teach or suggest a special purpose computer system or computer-implemented method with the combination of operations claimed.

Regarding the unequivocal rejection of the Merrill Lynch proposal, there are multiple quotes on this point from the 1988 letter in our previous response filed May 14, 2009. See for example this quote from page 3 of the 1988 Schwartz letter:

“Based on a review of this document and previous letters to Merrill Lynch dated July 13, 1977, and June 22, 1983, concerning the structure of the CMA Program, and on telephone discussions with you and Mr. Zaitzeff, Board staff has concluded that the MMDAs offered through the CMA Program could continue to be treated as MMDAs under section 204.2(d)(2)(ii) of the Board’s Regulation D even if CMA customers holding MMDAs through CMAs are not strictly limited as to the number and types of withdrawals or transfers which may be made from the CMA **as long as each MMDA in a CMA continues to be subject to the withdrawal and transfer limitations in that section and provided that the CMA is not otherwise promoted or used as a device to evade the transfer limitations on MMDAs.**”

[Emphasis added.]

Also, in a follow-up, note the 1990 Federal Reserve letter (1990 Fed. Res. Interp. Ltr. LEXIS 94, disclosed in the IDS of September 9, 2008) responding to a query whether the June 22, 1988 Federal Reserve letter was still in effect, stated as follows:

“The letter [the June 22, 1988 letter] speaks for itself and has not been withdrawn or modified to date. Nevertheless, depository institutions relying on this letter and participating in the program may wish to pay particular attention to the cautions in the paragraph beginning at the bottom of page three and finishing at the top of page four of that letter. The letter cautions that:

a change in CMA customer transfer activity (whether in aggregate transaction activity or a significant increase in activity in individual accounts) or changes in the CMA Program by Merrill Lynch, such as promotion of the Program as a transaction account or as a means of exceeding MMDA transfer limitations, could lead to the conclusion that the CMA Program is being used as a device to assist the MMDA banks in evading reserve requirements on transaction account balances and, therefore, that the MMDA components of the CMA Program should be considered reservable as transaction accounts.”

One of ordinary skill in this art simply would **not** modify the non-checking CMA **Savings Account** teaching that “**The CMA account is not a bank account or intended as a substitute for checking,**” to provide a programmed system that uses multiple aggregated accounts and which operates as a back-end for processing funds resulting from a large plurality of checking/debit transactions comprising payments made to third parties for a large plurality of checking and debit accounts, **e.g., back-end processing** of funds resulting from checking/debit processing for more than 6 withdrawals by one or more of checks or debits or ACH for a single client in a month for payments to third parties, **in view of these letters that explicitly refuse to approve more than 6 withdrawals by one or more of checks or debit card or ACH for a single client in a month for payments to third parties,** much less use this processing to net withdrawals and deposits of multiple clients and transfer the netting result from or to one or more of a plurality of large aggregated accounts that **actually hold the funds** of the multiple clients.

Note that the ISA account described in the Merrill Lynch **Savings Account** Fact Sheet, when used as the client’s primary money account, **is for overflow**, e.g., free credit balances coming from the securities account portion of the CMA financial service are automatically transferred into the ISA account. See page 51, the first paragraph under the heading “The ISA Account as the Primary Money Account.” The ISA account may also be used for savings. See page 51, the second paragraph under the heading “The ISA Account as the Primary Money Account.” When the ISA account is used as a secondary account, the client is described as transferring whole dollar amounts into the account. In this instance, the CMA money market fund is described as the primary account for the client. See page 51 under the heading “The ISA Account as a Secondary Money Account.” This seems to fit with the 1988 Schwartz letter operation of the CMA account.

One of ordinary skill in the art at the time of the present invention, would not have been motivated or otherwise inclined to modify the CMA **Savings Account** of the Fact Sheet, which uses the ISA account for securities cash overflow and savings, or uses the ISA account as a secondary account, and which **Savings Account** Fact Sheet explicitly states is **NOT a substitute for a checking account**, and to modify the **Savings Account** Fact Sheet CMA account based on Federal Reserve letters in 1983 and 1988 explicitly refusing to approve more than 6 withdrawals by one or more of checks or debit card or ACH for a

single client account in a month for payments to third parties, and in the 1988 letter, responding to a Merrill Lynch request simply for relief from monitoring its customers.

Regarding the claims, these references do not suggest a back-end computer operation for processing “**each of more than six (6) withdrawals and/or transfers by check and/or debit card and/or ACH debit within a month from each of a plurality of said client demand accounts,**” and at the same time, obtaining interest on the funds by performing a computerized netting operation to make deposits to and withdrawals from multiple large aggregated accounts, so that “**more than six (6) transfers and/or withdrawals are made during a month from at least one of said FDIC-insured and interest-bearing aggregated deposit accounts.**”

Thus, the claimed “subject matter as a whole,” of this back-end processing of funds resulting from checking/debiting payments made to third parties, was not obvious at the time the invention was made to a person having ordinary skill in the art, as is required to make out a rejection under 35 USC 103(a). Accordingly, Applicants respectfully request consideration and withdrawal of the rejection in view of the foregoing reasons set forth herein.

Additionally, there is no stated rationale in the 06/24/09 Office Action explaining why one of ordinary skill in the art would modify the Merrill Lynch CMA Savings Account Fact Sheet with its multiple teach-aways, or make any other combination with the applied art with these teach-aways, that would meet applicants’ claims. The multiple teach-aways in these references are strong evidence that no such rationale exists. Thus, a prima facie case has not been made out.

Agreement was reached that Allowances would be issued for the present case, and also Divisional 11/149,278 and Continuation 11/932,762.

The examiner should be aware that the following co-pending patent applications disclosed in an IDS relate to similar kinds of products, although the claims are clearly patentably distinct. The most recent action for these applications is listed.

The most recent action for the co-pending applications is listed.

10/825,440 filed 04-14-04 (8/11/09 Office Action rejection)

09/677,535 filed 10-02-00 (07/22/08 Notice of Allowance – Proposed amendment filing – Petition to Withdraw to file IDS and Amendment – Dismissal of Petition – Petition Renewed – Petition granted—6/24/09 Office action with Rejection received.) (Present Case)

10/071,053 filed 02-08-02 (Issued as U.S. Patent No. 7,519,551)

10/305,439 filed 11-26-02 (Notice of Allowance 05/28/09—RCE plus amendment filed – Non Final Rejection 09/16/09)

11/149,278 filed 06-10-05 (Notice of Allowance received.)

10/382,946 filed 03-06-03 (Issued as U.S. Patent No. 7,536,350)

10/411,650 filed 04-11-03 (Issued as U.S. Patent No. 7,509,286)

11/641,046 filed 12-19-06 (02/19/09 Office Action with rejection—Response filed)

11/689,247 filed 03-21-07 (Notice of Allowance Received)

11/767,827 filed 06-25-07 (Notice of Allowance Received)

11/767,837 filed 06-25-07 (Notice of Allowance Received)

11/767,846 filed 06-26-07 (Notice of Allowance Received)

11/767,856 filed 06-25-07 (Notice of Allowance received)

11/840,064 filed 08-16-07 (10/15/08 Office Action with rejection—abandonment notice)

11/840,060 filed 08-16-07 (4/29/09 Office Action with rejection—Response filed)

11/840,052 filed 08-16-07 (4/29/09 Office Action with rejection---Response filed)

11/932,762 filed 10-31-07 (Office Action Rejection 09/15/09.)

12/271,705 filed 11-14-08 (03/20/09 – (Notice of Allowance Received)

12/025,402 filed 02-04-08

12/340,026 filed 12-19-08

12/408,507 filed 03-20-09

12/408,511 filed 03-20-09

12/408,523 filed 03-20-09

12/453,387 filed 05-08-09

12/453,388 filed 05-08-09

12/453,389 filed 05-08-09

12/453,390 filed 05-08-09

12/622,979 filed 11-20-09 (continuation of 09/677,535)

12/638,544 filed 12-15-09

The examiner is directed to review the file of these other co-pending applications as he/she deems appropriate, to determine the reasoning and references applied in the current and/or prior office actions, as well as applicants' responses thereto.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,



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